IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. **31 of 1996**

Date of Decision : 14.6.2007

Ramesh Kumar & another …….. Appellants-plaintiffs.

Versus:

Rup Singh and others ….. Respondents-defendants.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No

For the appellants-plaintiffs: Mr. R.K.Sharma, Advocate

For the respondents-defendants: None

Sanjay Karol, J (Oral).

The matter was called on 12.6.2007, but no one was present on behalf of the respondents and, therefore, was kept for hearing on 13.6.2007, when also none appeared for the respondents but was heard in part.

Today, when the matter was again taken up for hearing, none appeared for the respondents and I was informed by the counsel for the appellants that the counsel for the respondents whose Vakalatnama is on record, was contacted on Phone and informed about the development of the hearing. The appeal is, therefore, heard on merits in the absence of the counsel for the respondents.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

The present appeal arises out of the judgment and decree dated 15th November, 1995 passed by the District Judge, Hamirpur in Civil Appeal No. 73 of 1989 titled as Rup Lal vs. Ramesh Kumar & Others.

For the purposes of convenience, the appellants herein are referred to as 'the plaintiffs' and the respondents 'as defendants'. Plaintiffs filed a suit for permanent injunction inter alia contending that they are owners in possession of land comprised in Khata No. 40 min, Khatauni No. 85, Khasra No. 250, measuring 3 marlas situate in Tikka Bagwara-Khurd, Tappa Bamsan, Tehsil Bhoranj, Distt. Hamirpur, H. P. For the purposes of proper appreciation of facts and adjudication of controversy, it would be pertinent to reproduce the prayer clause in the suit as under:-

> "It is, therefore, prayed that the suit of plaintiffs for permanent injunction of land comprised in khata No. 40 min, khatauni No. 85, khasra No. 250, measuring 3 marlas land revenue Rs.0.01p as per Jamabandi of 1984-85 situated at tikka Bagwara-Khurd, Tappa Bamsan, Tehsil Bhoranj, District Hamirpur, H.P. may kindly be decreed and defendants who are strangers to the suit land be restrained from interfering over suit land be decreed with costs."

The suit was filed on the premise that on khasra Nos.247, measuring 6 marlas, & 250 measuring 3 marlas, totaling 9 marlas having khata / khatauni numbers mentioned hereinabove, there were Gair Mumkin Shops, which were given on lease to Shri Nankoo, Shri Mangatu and Shri Basanta. Shri Nankoo died as bachelor. Shri Basanta, since deceased, was living with his family at a far of place near Nangal for the last 35 years and after his death, lease stood terminated and possession was with the plaintiffs. Gair Mumkin Shops on Khasra No. 250 were in ruin and the land

underneath was cultivated by the plaintiffs. With regard to six marlas of adjoining land bearing Khasra No. 247, the shop continued to be in possession of Shri Mangtoo, about which there is no dispute at all. The defendants as strangers to the suit land threatened to dispossess the plaintiffs from the said 3 marlas of land comprising of khasra No. 250 with the object of raising construction thereupon. In the suit, the defendants filed their written statement and contested the suit on the ground that about 80 years ago, the shops were constructed by the ancestors of the defendants. The forefathers of the defendants were permitted to construct the shop by the erstwhile owners with the understanding that they would not be evicted from the land. Lagan of Tobacco and three paise was given as a consideration for the same. Defendant No.2, namely, Shri Rup Lal, son of Shri Jaffar, purchased the shop from Shri Kanshi Ram, who had purchased it from Shri Basanta on 8.8.1960. Therefore, the defendants have become owners of the shop as well as the disputed land. The possession of the plaintiffs however was denied.

On the basis of the pleadings, the trial Court framed the following issues :-

1. Whether plaintiffs are entitled to the relief of permanent Injunction? OPP.

2. Whether the plaintiffs are estopped from filing this suit by their act and conduct? OPD

3. Whether the defendants are permanent lessees as alleged and have become owners under H.P. Tenancy and Land Reforms Act? OPD.

4. Whether the suit is time barred? OPD.

5. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD.

6. Whether this court has got no jurisdiction? OPD.

7. Relief.

Plaintiffs examined Shri Rup Lal, son of Shri Ram Sahai PW-1, Shri Basant Ram PW-2 , Shri Jagdish Chand PW-3 and the defendants examined Shri Bhag Singh DW-1, Shri Rup Singh, son of Shri Lal Singh DW-2, Shri Parkash Chand DW-3 and Shri Prem Chand DW-4.

The Trial Court after considering the material on record decided issue No.1 in favour of the plaintiffs and decreed the suit. Issues No.2 to 6 were also decided against the defendants. While decreeing the suit, the trial Court held that there was sufficient evidence on record to prove that the plaintiffs were in cultivable possession of the land comprising of 3 marlas situated on Khasra No. 250 for the last 10 to 12 years. In fact, he relied upon the statements of the defendants to establish the vacant cultivable possession of the plaintiffs. Based on the entire evidence, he restrained the defendants except Mangtoo from interfering in the possession of the plaintiffs over the suit land comprised in Khasra No. 250.

Aggrieved by the same, the defendants preferred an appeal before the District Judge, which was registered as Civil Appeal No. 73 of 1989 titled as Rup Lal, son of Shri Jaffar vs. Ramesh Kumar, son of Shri Rup Lal and others. The Appellate Court framed the following point for determination:-

"1. Whether the impugned judgment and decree warrants interference?"

Appreciating the evidence of the parties, the Appellate Court in terms of its judgment and decree dated 15th November, 1995 reversed

the judgment of the trial Court. He held that shops are in existence even on khasra No. 250 and the defendants having purchased the same are in possession of the same. To arrive at such a conclusion, he relied upon the revenue record Ex.P/1 and statements of all the witnesses. He disbelieved the plaintiffs' witnesses and relied upon the statements of the defendants' witnesses.

The present appeal was admitted on 19th March, 1997 with the following substantial questions of law:-

> "1. Whether the learned first appellate Court has not mis-read the oral and documentary evidence regarding khasra No. 250?
>
> 2. Whether the learned first appellate Court is justified in not appointing Local Commissioner for the demarcation of land, more particularly, when the dispute was regarding the identity of the land?
>
> 3. Whether the learned first appellate Court is justified in ignoring the evidence, which goes to the root of the case?"

Learned counsel for the plaintiffs argues that question No.2 is not a substantial question of law and questions No. 1 & 3 are overlapping. Therefore, the present appeal is being decided on the basis of question No.1 only.

Learned counsel has referred to para 10 of the impugned judgment to show that the Appellate Court proceeded on wrong assumption of fact and, therefore, committed a serious-error in returning his findings. He wrongly presumed that the dispute in question pertains to the shop comprising on khasra No. 247. For the purposes of convenience and ready reference, I am reproducing that part of the order which substantiate the aforesaid contention of the learned counsel:

> "The plaintiffs have described themselves to be the owners alongwith others of 3 Marlas vacant land beneath Gair Mumkin shop comprised in khasra No. 247."

It is further argued by the learned counsel that in this background, the learned Judge has mis-appreciated the evidence of the parties on record and, therefore, misdirected himself.

As would be evident from the prayer clause, which has been reproduced hereinabove, it is evident that the learned Judge has proceeded on the wrong premise that dispute in question pertains to land comprising in khasra No. 247. In this background, learned counsel for the plaintiffs, has rightly drawn my attention to the statements of the witnesses to establish that the parties also understood that dispute pertained with regard to the land comprising in khasra No. 250 measuring 3 marlas only. He has drawn my attention to the reasonings given by the trial Court in arriving to the conclusion that the land as owner was in cultivable possession of the plaintiffs.

PW-1 Rup Lal, son of Shri Ram Sahai has stated that the plaintiffs are in possession of the land comprising in khasra No. 250 measuring 3 marlas since 1976 and prior to the same, the possession was that of Shri Ram Dass and others. The land in question was bought by Shri Sukh Ram and was never in possession of the defendants. The land comprising of six marlas on khasra No. 247 is in possession of Shri Mangtoo. In my view, the learned trial Court has wrongly recorded that the statement of this witness is full of contradictions and supports the claim of the defendants.

PW-2 Shri Basant Ram has stated that the land in question is three marlas and is in cultivable possession of the plaintiffs for the last 10 to 12 years and has never been in the possession of the defendants. I have gone through the statement of the witness and the Appellate Court has disbelieved the witness on the ground that he does not remember the khasra number of the disputed land. Perusal of the statement would show that he has sufficiently described the suit property by giving reference to the adjoining property such as school and common passage (Shaream Rasta).

Shri Jagdish Chand PW-3 has also stated that the disputed land is on khasra No.250, which is in the possession of the plaintiffs for the last 12 to 13 years. In cross-examination, he has clarified that the land belonging to Shri Kanshi Ram purchased by defendant Rup Singh comprised in Khasra No.247. He has sufficiently described Khasra No. 250 by stating that on the left Western side, there is a school and on the northern side there is a field No. 246. He has also testified the land to be partitioned in his presence and denied the suggestion that Shri Rup Singh son of Shri Jaffar and Shri Mangtoo had their shop on khasra No. 250.

In arriving to its conclusion, the Appellate Court has heavily relied upon the revenue record Ex.P1 (jamabandi for the year 1984-85) which shows that on khasra No. 250 Gair Mumkin Dukan / shop is in existence. The learned Judge has wrongly read the document which is evident from the fact that the document depicts the land on Khasra No. 250 as *uftada,* which means shops were ruined.

In view of the said evidence on record, the plaintiffs had rightly been able to prove their ownership and possession. For the

purposes of ready reference, the reasoning given by the trial Court in arriving to its conclusion and disbelieving the defendants' witnesses is reproduced as under:-

> "However, the plaintiffs have led oral evidence in order to show that previously there was a shop on the suit land comprising khasra No. 250 but that collapsed as Nanku died bachelor and Basanta left for Nangal about 30/35 years ago and ultimately died there. The vacant land was purchased by them from Sukh Ram and now for the last 10 to 12 years have been in possession of it. They made he land in suit to be fit for cultivation and now it is cultivable. Although the defendants have tried to establish that on the suit land there is a shop which was purchased by defendant Rup Lal son of Jaffar from Kanshi Ram in the year 1985 for a consideration of Rs.10,000/- but from the writings which have been executed to this effect, it is not established that this shop is on khasra No. 250. DW3 Shri Parkash Chand who is the general attorney of Kanshi Ram has also failed to state that shop so purchased by Rup Lal to be over khasra No. 250. On the contrary, it has been admitted by DW2 Shri Rup Singh that the Panchayat wanted to construct a Janj ghar on the suit land. Although he has denied himself to be a party to the present suit but when he admits that he is the son of Lal Sigh and has signed a summon Ex.DW2/P then it is amply proved that he is the same person who has been impleaded as defendant No.1 in the suit. He has also admitted that one shop had collapsed in the year 1947. Although he has tried to state that it was a cattle shed which had collapsed in the year 1947 but to me his first version appears to be correct and both the later versions appear to be after thought wherein he has stated a cattle shed and then a boarding house to have collapsed in the year 1947. In this way this witness has supported the claim of the plaintiffs that a shop had collapsed. DW3 Shri Parkash Chand has stated to this effect in the cross examination that the vacant land was once ploughed by plaintiff

Rul Lal after its purchase from Sukh Ram. He is very specific that once this land was cultivated. The case of the plaintiffs is also that they have been in possession of the suit land after its purchase from Sukh Ram. When DW3 Shri Parkash Chand states that the plaintiffs have cultivated the vacant land so purchased from Sukh Ram then he also supports the claim of the plaintiffs that they have been in possession of the suit land which is cultivable. Then the statement of DW4 Shri Prem Chand has completely demolished the defence of the defendants when in the cross examination he has stated khasra No. 250 to be cultivable and the shop purchased by Rup Lal son of Jaffar to be in khasra No. 247. From the oral evidence which has come on record it is amply proved hat khasra No. 250 is vacant and the plaintiffs have made it fit for cultivation and are in possession of it. Defendant No.1 Shri Rup Singh who has appeared in the witness box as DW2 has stated himself to be the Pardhan of Gram Panchayat Bagwara and has stated in the cross examination that the Panchayat wanted to construct a Janj gahr on the suit land. He has also stated that the construction work had to be stopped as the plaintiffs filed the suit. From his statement it is further established that the allegations of the plaintiffs that the defendants threatened to raise construction over the suit land are correct. When it is admitted by defendant No.1 Shri Rup Singh himself that they had to stop the construction then it is clearly proved that the defendants have started interfering in the possession of the plaintiffs over the suit land comprising khasra No. 250 by way of raising forcible construction. However, as the plaintiffs have no dispute with Mangtu son of Shri Shiv Ram, defendant No.7, therefore, no interference is proved on his part. As the plaintiffs have been proved to be owners in possession of the suit land i.e. comprising khasra No. 250 alongwith other co-sharers and the alleged interference is also established, therefore, I hold that they are entitled to the relief of permanent injunction."

I have also examined the statements of the defendants' witnesses who have stated that the defendants have purchased the land from Kanshi Ram who in turn had purchased the same from Basant Ram in the year 1960. There statements are to be disbelieved for the reasons given by the trial Court. Further, the sale deed, according to them is unregistered and unstamped, in any case, does not mention khasra number as also the description of the property which was purchased by the defendants. In my view, the defendants have not been able to establish that they had purchased the land in question.

Having examined the entire records as also the reasons, which I have given hereinabove, I am of the view that the Appellate Court seriously erred in reversing the well reasoned judgment of the trial Court which was based on cogent evidence and material on record.

Substantial Question of Law No.1 is answered accordingly.

No other point was urged.

The accumulative effect of the above discussion is that the plaintiffs have succeeded in making out the case for interference.

In view of the above discussion, the appeal is allowed and the suit of the plaintiffs is decreed with no order as to costs.

(Sanjay Karol),
Judge.

June 14, 2007.
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